



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

**MERCHANT & GOULD PC  
P O BOX 2903  
MINNEAPOLIS, MN 55402-0903**

**COPY MAILED**

SEP 23 2005

**OFFICE OF PETITIONS**

In re Application of	:
Daniel M. Herzog et al	:
Application No. 10/823,402	: DECISION ON PETITION
Filed: April 12, 2004	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 2316.1845US01	:

This is a decision on the petition under 37 CFR 1.313(c)(2); filed August 24, 2005, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED as moot**.

Unfortunately, the instant petition was not received in the deciding official's office within sufficient time to avert the issuance of the above-identified application into a patent. The Office sincerely apologizes for any inconvenience caused petitioner in this matter.


Petitioner's attention is directed to 37 CFR 1.313(d), which states:

A petition under this section will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials **before the date of issue**.

Since this application has issued, the concurrently filed request for continued examination (RCE) is improper and will not be processed. In view thereof, the \$790 filing fee submitted therefor, as well as the petition fee of \$130, will be refunded in due course.

The Information Disclosure Statement has been placed of record in the file of the above-identified application without further consideration. See 37 CFR 1.97(i).

Telephone inquiries should be directed to the undersigned at (571) 272-3218.

  
Frances Hicks  
Petitions Examiner  
Office of Petitions